



May 23, 2002

Ms. Linda Cloud  
Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR2002-2787

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163342.

The Texas Lottery Commission (the "commission") received a request for the following categories of information:

1. Transcript of the hearing for the [Heart of Texas Black Chamber of Commerce (the "HOTBCC")];
2. Copy of the bingo application for the HOTBCC;
3. All bingo audits and the outcome performed by the Lottery Commission within the last ten years;
4. A list of all approved non-profit organizations that hold Bingo Conductors Licenses, by minority code, for the State of Texas;
5. A list of all non-profit organizations whose inactive and/or licenses have been revoked within the last ten years, by minority code;
6. A list of all non-profit organizations that hold a license to conduct bingo within the State of Texas, by minority code;

7. What have "pass practice" included after audits of other non-profit organizations;
8. How many audits per non-profit organization, per years of operating bingo programs, have been the practice within the last ten years; and
9. A list of organizations operating a bingo program, whose executive board has been asked to resign and replaced by an entirely new executive board, within the history of the bingo program.

You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information does not appear to be responsive to categories 1, 2, 4, 5, 6, 7, and 9 of the request for information. Therefore, to the extent that information exists that is responsive to categories 1, 2, 4, 5, 6, 7, and 9 of the request for information, it must be released to the requestor at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

In regard to the submitted information, section 552.103 provides, in relevant part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A government body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). For purposes of section 552.103(a), this office considers a contested case under the Texas Administrative Procedure Act ("APA"), Government Code chapter 2001, to constitute "litigation." *Id.* In this instance, you state that "an administrative contested case procedure is pending at the State Office of Administrative Hearing involving the Charitable Operations Division and HOTBCC." Thus, a contested case under the APA is pending litigation. However, you have not explained the issues of the litigation or

submitted the petition of the litigation to this office. Therefore, the commission has not provided this office with enough information to determine whether the submitted information relates to the pending litigation for the purposes of section 552.103(a). As you have failed to establish the applicability of section 552.103, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

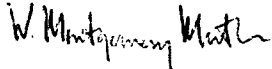
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 163342

Enc: Submitted documents

c: Mr. Mac A. Florence  
President  
Heart of Texas Black Chamber of Commerce  
P.O. Box 1485  
Waco, Texas 76703  
(w/o enclosures)